

### **IC 23-19-3**

#### **Chapter 3. Registration of Securities and Notice Filing of Federal Covered Securities**

*Effective 7-1-2008.*

### **IC 23-19-3-1**

#### **Unlawful acts**

*Effective 7-1-2008.*

Sec. 1. It is unlawful for a person to offer or sell a security in this state unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under IC 23-19-2-1 through IC 23-19-2-3; or
- (3) the security is registered under this article.

*As added by P.L.27-2007, SEC.23.*

### **IC 23-19-3-2**

#### **Filing and fee requirements**

*Effective 7-1-2008.*

Sec. 2. (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under IC 23-19-2-1 through IC 23-19-2-3, a rule adopted or order issued under this article may require the filing of any or all of the following records:

- (1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with IC 23-19-6-11 signed by the issuer and the payment of a fee of:

- (A) five hundred dollars (\$500) for an issuer with net assets not exceeding ten million dollars (\$10,000,000); or
- (B) one thousand dollars (\$1,000) for other issuers.

- (2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission, under the Securities Act of 1933.

- (3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission, and payment of a fee of five-hundredths of one percent (0.05%) of the excess of the dollar amount of securities sold during the fiscal year over the dollar amount of securities redeemed, not to exceed two thousand dollars (\$2,000) in any one (1) year. The fee required in subdivision (1) shall be applied as a credit against the fee required under this subdivision.

(b) A notice filing under subsection (a) is effective for one (1) year commencing on the later of the notice filing or the effectiveness

of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this article to be filed and by paying a renewal fee of two hundred fifty dollars (\$250). A previously filed consent to service of process complying with IC 23-19-6-11 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule under this article may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with IC 23-19-6-11 signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

*As added by P.L.27-2007, SEC.23.*

### **IC 23-19-3-3**

**Registration under Securities Act of 1933; registration by coordination; registration statement; required information; notice**  
*Effective 7-1-2008.*

Sec. 3. (a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 5 of this chapter and a consent to service of process complying with IC 23-19-6-11:

(1) A copy of the latest form of prospectus filed under the Securities Act of 1933.

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this article.

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the commissioner.

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or section 6 of this chapter or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 6 of this chapter.

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this article.

(d) The registrant shall promptly notify the commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The commissioner shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this article when all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under section 6 of this chapter. The notice by the commissioner does not preclude the institution of such a proceeding.

*As added by P.L.27-2007, SEC.23.*

#### **IC 23-19-3-4**

#### **Registration by qualification; registration statement; required information; prospectus**

*Effective 7-1-2008.*

Sec. 4. (a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in section 5 of this chapter, a consent to service of process complying with IC 23-19-6-11, and, if required by rule adopted under this article, the following information

or records:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected.

(3) With respect to persons covered by subdivision (2), the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (2) other than the person's occupation.

(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in subdivision (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering.

(7) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for

which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities.

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivision (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options.

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract.

(12) A description of any pending litigation, action, or

proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with IC 23-19-2-2(17)(B).

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record that is public, which is used in connection with the registration statement.

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

(18) Any additional information or records required by rule adopted or order issued under this article.

(c) A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this article, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under section 6 of this chapter;

(2) the commissioner has not issued an order under section 6 of this chapter delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The commissioner may delay effectiveness once for not more than ninety (90) days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The commissioner may also delay effectiveness for a further period of not more than thirty (30) days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this article may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently with the earliest of:

- (1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;
- (2) the confirmation of a sale made by or for the account of the person;
- (3) payment under such a sale; or
- (4) delivery of the security under such a sale.

*As added by P.L.27-2007, SEC.23.*

### **IC 23-19-3-5**

**Filing registration statement; fee; incorporation by reference; nonissuer distribution; escrow and impoundment; effective period; reports; amendment**

*Effective 7-1-2008.*

Sec. 5. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this article.

(b) A person filing a registration statement shall pay a filing fee of five-hundredths of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred fifty dollars (\$250) and may not be more than one thousand dollars (\$1,000). If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 6 of this chapter, the commissioner shall retain two hundred fifty dollars (\$250) of the fee.

(c) A registration statement filed under section 3 or 4 of this chapter must specify:

- (1) the amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this article or the predecessor act within five (5) years preceding the filing of a registration statement may be

incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section 4 of this chapter, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this article may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this article, but the commissioner may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this article may require as a condition of registration that a security registered under this article be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this article or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) Except while a stop order is in effect under section 6 of this chapter, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this article during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this article are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this article may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the commissioner so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the



person filing the amendment shall pay the greater of one hundred dollars (\$100) or the difference between the amount originally paid and the amount the registration fee would have been if all the securities to be offered had been registered. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid.

*As added by P.L.27-2007, SEC.23.*

#### **IC 23-19-3-6**

#### **Stop orders; denial, suspension, or revocation of registration; standards; postponement; hearing, process; modification or vacating order**

*Effective 7-1-2008.*

Sec. 6. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

- (1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 5(j) of this chapter as of its effective date, or a report under section 5(i) of this chapter, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) this article, a rule adopted or order issued under this article, or a condition imposed under this article has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; by a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;
- (3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court with jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this article applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this subdivision more than one (1) year after the date of the order or injunction on which it is based, and the commissioner may not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;
- (4) the issuer's enterprise or method of business includes or

would include activities that are unlawful where performed;  
(5) with respect to a security sought to be registered under section 3 of this chapter, there has been a failure to comply with the undertaking required by section 3(b)(4) of this chapter;  
(6) the applicant or registrant has not paid the filing fee, but the commissioner shall void the order if the deficiency is corrected;  
or  
(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

(b) To the extent practicable, the commissioner by rule adopted or order issued under this article shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(f) The commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

*As added by P.L.27-2007, SEC.23.*

### **IC 23-19-3-7**

#### **Waiver or modification of requirements**

***Effective 7-1-2008.***

Sec. 7. The commissioner may waive or modify, in whole or in part, any or all of the requirements of sections 2, 3, and 4(b) of this chapter or the requirement of any information or record in a registration statement or in a periodic report filed under section 5(i) of this chapter.

*As added by P.L.27-2007, SEC.23.*